

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 12065 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?	☐
2 To be referred to the Reporter or not ?	☐
3 Whether their Lordships wish to see the fair copy of the judgment ?	☐
4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	☐
5 Whether it is to be circulated to the civil judge ?	☐
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GUJARAT ELECTRICITY BOARD - Petitioner(s)**Versus****THAKAR HASMUKHHAI KHELSHANKER - Respondent(s)****Appearance :**

MR NK MAJMUDAR for Petitioner(s) : 1,
 RULE SERVED for Respondent(s) : 1,
 RULE SERVED BY DS for Respondent(s) : 1,
 PARTY-IN-PERSON for Respondent(s) : 1,

CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**Date : 05/09/2005****ORAL JUDGMENT**

1. Heard Mr.N.K. Majmudar, learned counsel appearing for the petitioner. Rule is served to the otherside and the respondent no.1-orig. Defendant has opted to appear in person. On

earlier occasion, the orig.defendant has filed reply affidavit in vernacular language (Gujarati) on 29th April, 2005 and the same is on record at pg.36.

2.1 I have considered the contents of the reply affidavit, mainly the points of resistance. The petitioner is the orig.plaintiff and I am told by Mr.Majmudar that the orig. plaintiff has examined the witnesses in support of the Suit and a detailed cross-examination of the witnesses examined has been made by the otherside in the trial Court. When the orig. defendant was asked to produce his evidence he applied that a witness from the office of the orig.plaintiff-Electricity Board may be called as his witness. I am told that the officers aware about the facts and details as to the dispute between the parties have been examined and they are available to the Court, if required, be recalled.

2.2 The grievance of the petitioner-Board is that

the orig.defendant applied for witness summons against the Legal Adviser of the petitioner-Board. Mr.Majmudar has pointed out that the trial Court has grossly erred in exercising its jurisdiction to issue witness summons calling the Legal Adviser of the petitioner-Board as a witness for the orig.defendant. It is submitted that :

(i) the application preferred by the defendant for issuance of summons in question is vague in nature.

(ii) It is not averred that the witness called is aware about the crux of the dispute between the parties.

(iii) It is submitted that the documents which the orig.defendant intends to rely are not available to the defendant and they are part of petitioner-Board's personal record.

3. There is some force in the arguments of Mr. Majmudar that the case of the petitioner-Board is based on the agreement between the petitioner-Board and the consumer. No specific document has been mentioned as to which document the Legal Adviser should bring. It is rightly argued that the dispute raised by the otherside relates to statutory rules and circulars as to the policy of the Board. The personal knowledge of the Legal Adviser in such a matter could not have assisted the Court at all even if called as Court witness. It is the consistent practice of the Indian Courts not to call any advocate or legal advisor as a witness as they are enjoying certain privileges. In such a situation, for the sake of issuing it, the witness summons to the Legal Adviser ought not have been issued. It is true that a party can call any witness with the help of witness summons but when a party is not able to satisfy as to how a particular witness would help the Court in arriving at a just decision, such a witness on a vague allegation like the application preferred by the

respondent-defendant, cannot be issued a witness summons.

4.1 It is important to consider that the documents, if any, in custody of plaintiff-Board could have been got produced under the scheme of Code of Civil Procedure.

4.2 It is also relevant to note that the name of the Legal Adviser has not been shown in the list of witnesses produced by the respondent-defendant. Considering the scheme of Order 16 Rule 3 of the Code of Civil Procedure, the ld.Civil Judge ought not have ordered to issue witness summons to the Legal Adviser of the Board.

5. Thus, it appears that the order under challenge passed by the ld.Civil Judge is erroneous and the decision is a decision which can be termed as decision arrived at by exceeding jurisdiction vested with the Court. Of course, there is an element of discretion in the orders when it is

passed for issuance of witness summons because the ultimate goal is to reach to a fair and just finding. In the present case, there was no scope to call Legal Adviser of the petitioner-Board as witness by the respondent-defendant under a vague application that has been preferred by respondent-defendant.

6. The lower Court has not considered the nature of resistance placed by the plaintiff before allowing application praying for witness summons to Legal Advisor of the plaintiff-Board. Normally, to rectify certain procedural error, supervisory jurisdiction of this Court vested under Article 227 of the Constitution of India is not permitted to be invoked because most of the irregularities can be taken care of well by the Appellate Court while dealing with the appeal after the final decision/ judgment and decree passed in a civil proceedings. But the error which is likely to result into serious prejudice, not only to a party but also to a person when a party in the proceedings or where

their party is likely to be prejudiced on account of substantive procedural error then supervisory jurisdiction should be exercised when the Appellate Court has laid down the law that after amendment in the Code of Civil Procedure and more particularly in Section 115 of the Code of Civil Procedure, a substantive petition under Article 227 of the Constitution of India would lie and the error of law or a grave procedural error even can be rectified in exercise of powers of jurisdiction under Section 227 of the Constitution of India.

7. With above observations, the present petition is hereby allowed. The order under challenge dated 30th July, 2004 passed by the ld.Civil Judge below Exh.125 is hereby quashed and set aside. However, it is observed that it is open for the petitioner to prove the fact involving the question of law by leading evidence, if it so desires, stating details as required under Order 16 Rule 3 of the Code of Civil Procedure.

8. The Trial Judge is hereby directed to expedite the hearing of the Suit being old as filed in the year 1995.

(C.K. Buch, J)

Aakar